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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,878	10/12/2005	Terrence R Langford	122123.00004US2	4470
34282	7590	05/29/2007	EXAMINER	
QUARLES & BRADY LLP ONE SOUTH CHURCH AVENUE, SUITE 1700 TUCSON, AZ 85701-1621			DELCOTTO, GREGORY R	
ART UNIT		PAPER NUMBER		
		1751		
MAIL DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/552,878	LANGFORD
	Examiner	Art Unit
	Gregory R. Del Cotto	1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 March 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 1-13 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 14-22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/15/07</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-22 are pending. Applicant's arguments and amendments filed 3/15/07 have been entered.

Applicant's election of Group II, claims 14-22 in the reply filed on 3/15/07 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 1-13 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3/15/07.

Objections/Rejections Withdrawn

The following objections/rejections as set forth in the Office action mailed 11/1/06 have been withdrawn:

The rejection of claims 14, 17, and 19-22 under 35 U.S.C. 102(b) as being anticipated by Holsclaw et al (US 6,482,370) has been withdrawn.

The rejection of claims 14-22 under 35 U.S.C. 102(b) as being anticipated by WO02/32467 has been withdrawn.

The rejection of claims 15, 16, and 18 under 35 U.S.C. 103(a) as being unpatentable over Holsclaw et al (US 6,482,370) as applied to claims 14, 17, and 19-22 above, and further in view of WO02/32467 has been withdrawn.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 14, 17, and 19-22 rejected under 35 U.S.C. 102(b) as being anticipated by Kasting, Jr. et al (5,520,893).

Kasting, Jr. et al teach medical instruments, including stainless steel, plastic tubing, and the like, are sterilized in a portable apparatus that provides a low volume, high pressure flow of continuously circulating water containing from about 2 to 6 ppm of ozone. The apparatus for sterilizing articles comprises an open chamber for containing articles to be sterilized, said chamber receiving a recirculated supply of water containing ozone for immersion contact with the articles to be sterilized; an openable lid associated with said open chamber for substantially precluding ozone that escapes from the water from escaping from said chamber when said apparatus is being operated, said lid comprising an ozone destroying substance; means for recirculating a flow of the water containing ozone through said chamber sufficient for immersion contact of said articles

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in the ozone containing water, said recirculating means including: an ozone generator of generating ozone, a high voltage transformer for supplying power to said generator, said transformer being a step up transformer and having an output voltage of from at least about 8000 to 12000 volts, means for injecting ozone generated by said generator into water in a concentration of at least about 0.2 ppm, a pump having a fluid intake and a fluid discharge for recirculating water containing ozone at a pressure of from about 25 to 40 psig and at a rate of from about 1 to 4 gallons per minute, a first fluid flow conduit interconnecting said chamber and said intake side of said pump for flow from said chamber to said pump; a second fluid flow conduit interconnecting said ozone injecting means with said discharge side of said pump; and a third fluid flow conduit interconnecting said ozone injecting means with said chamber for recirculating flow of the water containing ozone through said chamber, and safety means electrically connected to said lid for precluding the operation of said recirculating means when said lid is open. See claim 1. Kasting, Jr. et al disclose the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teachings of Kasting, Jr. et al anticipate the material limitations of the instant claims.

Claims 15, 16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kasting, Jr. et al (US 5,520,893) as applied to claims 14, 17, and 19-22 above, and further in view of WO02/32467.

Kasting, Jr. et al are relied upon as set forth above. However, Kasting, Jr. et al do not teach teach the use of a filtering means in addition to the other requisite

elements of the apparatus as recited by the instant claims.

'467 teaches an apparatus for cleaning medical equipment comprising a supply of filtered water, a supply of ozonated water containing a predetermined concentration of water and means for delivering first a flow of filtered water over the surfaces of the equipment to be cleaned for a predetermined time followed by a flow of ozonated water over said surfaces for a predetermined time to disinfect the surfaces. See Abstract. The ozonated water is de-ionized prior to ozonating to the predetermined concentration. In the system, unozoneated water was pumped through the system for 10 minutes and then ozonated water was pumped through the system for 6 minutes which achieves a high level disinfection. See page 6, lines 1-15. After the cycle, rinse water and ozonated water may also be flowed over the outer surface of the endoscopes to disinfect these as well. See page 7, lines 10-35. The apparatus is comprises a means for filtering the tap water used in the process to provide a supply of filtered water. See claims 7-12.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a filtering means in the apparatus taught by Kasting, Jr. et al or Holsclaw et al, with a reasonable expectation of success, because '467 teaches the use of a filtering means in a similar apparatus for disinfecting medical instruments to provide filtered water which contacts said medical instruments and further, it would be desirable to one skilled in the art to use such a filtering means as a method of further cleaning, disinfecting, and purifying the water which comes into contact with medical instruments in the apparatus taught by Kasting, Jr. et al.

Response to Arguments

With respect to Kasting, Jr. et al, Applicant states that there is no water reservoir separate from the sterilizing pan, nor is the pump a recirculation pump in fluid connection with a water reservoir. Additionally, Applicant states that the sterilizing pan is simply a container into which instruments are placed loose. In response, note that, the Examiner asserts that Kasting, Jr. et al teach that the "distributor bar is connected to a fitting at one end thereof that extends through the pan wall and is connected to a source of water and dissolved ozone". See column 4, lines 1-20. Clearly, Kasting, Jr. et al teach a water source and reservoir which are connected. Additionally, Kasting, Jr. et al teach a pump having a fluid intake and a fluid discharge for recirculating water containing ozone at a pressure of from about 25 to 40 psig and at a rate of from about 1 to 4 gallons per minute which is the same as the "water-recirculating water pump" as recited by instant claim 14. Additionally, the Examiner asserts that placing the instruments in an open chamber for containing articles to be sterilized in a loose fashion would be encompassed by "a chamber adapted to connectorlessly engage said instrument"; placing loosely within a chamber does not involve any connections to any tubes, lines, etc. Thus, the Examiner maintains that the teachings of Kasting, Jr. et al are sufficient to anticipate the material limitations of the instant claims.

With respect to the rejection of claims 15, 16, and 18 under 35 USC 103(a) using Kastings, Jr. et al in combination with WO02/32467, Applicant states that this combination is not sufficient to render the claimed invention obvious. Applicant states that '467 does not disclose locating a filter anywhere except at the water source inlet. In

response, note that, '467 is a secondary reference relied upon for its teaching of a means for filtering water in a similar apparatus. The Examiner maintains that one of ordinary skill in the art clearly would have been motivated to use a filtering means for water at various stages in the apparatus taught by Kastings, Jr. et al, with a reasonable expectation of success, because '467 teaches the use of a filtering means in a similar apparatus for disinfecting medical instruments to provide filtered water which contacts said medical instruments and further, it would be desirable to one skilled in the art to use such a filtering means at various stages in the apparatus taught by Kasting, Jr. et al as a method of further cleaning, disinfecting, and purifying the water which comes into contact with medical instruments in the apparatus taught by Kasting, Jr. et al to reduce the risk of any contamination of the instruments.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
May 23, 2007